Reserved

Court No.7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.1219 of 2001

(Old case No.1690 of 1990)

Gopal Lal son of Mahes Lal,
Resident of Village Baragaon, Thana &
Tehsil Joshimath, District – Chamoli.

.....Appellants

Versus

State .....Opposite Party

Sri Promod Belwal, holding brief of Sri Vinod Sharma, learned Counsel for the appellant.
Sri M.A. Khan, learned brief holder for the State

Dated:21.11.2007

Hon'ble Dharam Veer, J.

This criminal appeal, preferred under Section 374 (2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) is directed against the judgment and order dated 30.08.1990 passed by Session Judge, Chamoli (Gopeshwar) in Sessions Trial No.3 of 1990, State of U.P. v. Gopal Lal, whereby the learned Sessions Judge has convicted the appellant under Sections 436 and 429 of The Indian Penal Code, 1860 (hereinafter referred to as I.P.C.) and awarded sentence for five years' R.I under Section 436 I.P.C. and four years' R.I. under Section 429 I.P.C. and has directed that both the sentences shall run concurrently.

2. In brief, the prosecution case is that on 14.04.1989 at about 9.00 P.M. accused-appellant Gopal

Lal, who had already drunk liquor, had come to the house of complainant Pushkar Lal and asked some liquor. On denial, accused-appellant told complainant Pushkar Lal that he would kill him and would set his house at fire. In the meantime, the complainant locked his house and went downwards. The complainant having walked to some distance, the accused-appellant set the house of the complainant at fire. Seeing fire, the complainant was returning upwards then the accused-appellant threatened to beat the complainant with stone. On this, the complainant went to Baragaon and told Bali Lal, Jagdish Lal and Pratapu Lal that accused-appellant Gopal Lal had set his house at fire and he was not allowing to extinguish the fire. After hearing the occurrence, Bali Lal, Jagdish Lal and Pratapu Lal along with the complainant reached at the place of occurrence to put out the fire and seeing them, the accused-appellant ran away. The accused-appellant was seen at the time of fleeing by the persons accompanying the complainant and when they extinguished the fire, they saw that a cow and its calf were dead due to burn and all articles in the house were also burnt. With the same averments the F.I.R. was lodged on 15.04.1989 at 9.20 AM by Pushkar Lal at Police Station Joshimath, District Chamoli, that F.I.R. is Ex.Ka-1 and on the basis of this F.I.R., the Chik F.I.R. was prepared by the Constable Clerk Balveer Singh, that Chik F.I.R. is Ex.Ka-3. The entry was made in the G.D., the carbon copy of G.D. is Ex.Ka-4. The death certificate of the cow and its calf issued by Livestock Expansion Inspector, Baragaon, District Chamoli is Ex.Ka-2. S.I. Shridhar Singh, Investigation Officer, inspected the place of occurrence and prepared site plan of the place of occurrence, that

site plan is Ex.Ka-5. Farda regarding the dead body of the and its calf and some burnt articles were also prepared, that Fards are Ex.Ka-6 and Ex.Ka-7 respectively. Letter addressed to Veterinary Officer, Joshimath, District Chamoli was also sent for conducting the post-mortem of the cow and the calf, that letter is Ex.Ka-8. During the course of investigation, Investigating Officer recorded the statements of the witnesses and after completing the investigation, he submitted the charge sheet against the present appellant under Sections 436, 429 and 506 I.P.C., that charge sheet is Ex.Ka-9.

3. Learned Chief Judicial Magistrate, Chamoli committed the case to the Court of Session on 09.02.1990 under Section 209 Cr.P.C. after complying the provisions of Section 207 Cr.P.C.

4. Learned Sessions Judge, Chamoli framed charges on 05.03.1990 against the present accused-appellant under Sections 436 & 429 I.P.C. and the charges were read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution examined P.W.1 Pushkar Lal (complainant), P.W.2 Bali Lal, P.W.3 Shashi Bhushan Dimari, P.W.4 S.I. Shridhar Singh (Investigating Officer) and P.W.5 S.I. Nakali Singh, (Investigating Officer). After that the statement of the appellant was recorded under Section 313 Cr.P.C., who denied the allegations made against him and in defence he did not produce any oral or documentary evidence.

6. After appreciating the evidence on record and hearing learned counsel for both the parties, learned Sessions Judge, Chamoli has convicted the appellant under Sections 436 and 429 I.P.C. and awarded sentence for five years' R.I under Section 436 I.P.C. and four years' R.I. under Section 429 I.P.C. and has directed that both the sentences shall run concurrently.

7. Against the said judgment and order, the appellant has preferred the instant appeal.

8. I have heard Sri Promod Belwal, holding brief of Sri Vinod Sharma, learned counsel for the appellant as well as Sri M.A. Khan, learned brief holder for the State and perused the entire record of the trial court.

9. To prove its case the prosecution has examined P.W.1-Pushkar Lal, who has stated in his statement that he knows the accused-appellant, who lives in his village. In the evening of 14.04.1989 at 9.00 P.M. Gopal had come to his house and at that time he was alone in his house and his mother had gone to his sister's house. Accused-appellant Gopal Lal, who had already drunk liquor, came to his house and told that if he did not give him liquor, he (appellant) would set his house at fire. He refused to give liquor and due to fear he locked his house and was going downwards the house of his brother-in-law (Jeeja), just then he saw that Gopal Lal took out matchbox from his pocket and burnt a matchstick and put it on the grass which was lying on the roof and his house was burning. He rushed towards his house to put out the fire but Gopal Lal threw stone upon him, then he rushed to the house of his brother-in-

law Bali Lal and told him that Gopal Lal had set his house at fire. From there he along with his brother-in-law Bali Lal, Pratapu, Jagdish Lal went to his house and at that time Gopal Lal was hiding under a tree. He along with the other persons extinguished the fire by pouring the clay and his house is situated at some distance from village Baragaon. He has further stated that one cow and one calf died due to burn injuries and some food grains and other articles worth about Rs.10-11 thousand were also burnt in that fire and the inspection about the dead cow and the dead calf was also done. He dictated the report to Rati Lal, who wrote and read over the report to him and after that he put his thumb impression on that report, i.e. Ex.Ka-1. The police enquired about the occurrence from him. This witness was cross-examined by the defence counsel at length but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is reliable and believable.

10. P.W.2 is Bali Lal, who has stated that complainant Pushkar Lal is his brother-in-law (sala) and accused-appellant Gopal Lal resided in his village and Gopal Lal was known to him before this occurrence. He has further stated that the occurrence took place on 14.04.1989. In that night Pushkar Lal came to his house weeping and told that Gopal Lal had set his house at fire and this was also told that Gopal Lal was asking liquor from Pushkar Lal and when Pushkar Lal refused to give liquor, Gopal Lal set the set the house of Pushkar Lal at fire. Thereafter, he, Pratapu and Jagdish along with Pushkar Lal went to the house of Pushkar Lal, where they saw that the house was burning. They put out the fire by pouring the clay. He has further stated that he saw the

accused-appellant Gopal Lal, who was hiding under a tree. After that, seeing him along with others, the accused-appellant Gopal Lal ran away downwards. The total loss of Rs. 10- 11 thousand was occurred in that occurrence including one cow, one calf, food grains and other articles. The mother of Pushkar Lal had gone to the house of her daughter and no one was living in the house of pushkar Lal except Pushkar Lal and his mother. The house of Pushkar Lal is situated at lonely place at about 1 or 1-1/2 Kms away form the village. This witness was also cross-examined by the defence counsel at length but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable.

11. P.W.3 is Shasi Bushan Dimari, who has stated that on 16.04.1989 he was posted as Livestock Expansion Officer, Baragaon. On that day he received a report from Medical Officer. He was ordered by the Livestock Officer to conduct medical of the cow and the calf and thereafter he went to the house of Pushkar Lal situated at Baragaon where he found one cow and one calf dead and in his opinion the cow and the calf had died due to suffocation caused due to smoke and certificate regarding that was given by him to the police and that certificate is Ex.Ka-2 which was written and signed by him.

12. P.W.4 is Shridhar Singh (Investigating Officer), who has stated that on 15.04.1989 he was posted as Sub Inspector at Police Station Joshimath and Village Baragaon falls within the circle of Police Station Joshimath. On that day, a written report, i.e. Ex.Ka-1,

was submitted by Pushkar Lal at 9.20 AM at the police Station. On the basis of that report, Constable Clerk Balveer Singh wrote a report in his own hand writing and signed on it and on that report he also signed and proved as Ex.Ka-3 and the entry was made in the G.D. by Constable Clerk Balveer Singh in his own hand writing, which is Ex.Ka-4. He enquired about the case and received the papers. Thereafter, he went to the place of occurrence and on the pointing out of complainant Pushkar Lal, he inspected the place of occurrence and prepared the site plan of the place of occurrence, that side plan is Ex.Ka.5. On the place of occurrence, he found that one cow and one calf were lying dead due to burn and *Fard* was prepared, that *Fard* is Ex.Ka-6. He also prepared *Fard* of the burnt articles, that *Fard* is Ex.Ka-7. He also wrote a letter to the Veterinary Officer, Joshimath for conduction the post mortem of the cow and the calf, that letter is Ex.Ka-8. On 16.04.1989, he received death certificate, Ex.Ka-2, from Veterinary Officer and on the same day he enquired from Shashi Bhushan Dimari, Livestock Expansion Inspector and on the same day accused-appellant Gopal Lal was arrested and was enquired. During the course of the investigation, he recorded the statements of the witnesses. He has further stated that on 24.05.1989, he recorded the statement of Pratapu Lal and thereafter he was transferred form Joshimath to Gopeshwar Police Station and rest of the investigation was entrusted to S.I. Nakali Singh.

13 P.W.5 is S.I. Nakali Singh (Investigating Officer), who has stated that on 22.06.1989 he was transferred to Police Station Joshimath. On that day, the investigation was being conducted by S.I. Sridhar Singh,

who was transferred to Gopeshwar and the rest of the investigation was conducted by him. On that day, he tried to find out witness Jagdish Lal but could not succeed, as a result of which he could not record the statement of Jagdish whose name was shown in the list of witnesses given in the F.I.R. After completing the investigation, he submitted the charge sheet i.e. Ex.Ka-9.

14. After that the statement of appellant was recorded under Section 313 Cr.P.C, who denied the allegations made against him and in defence he did not produce any oral or documentary evidence.

15. Sri Promod Belwal, holding brief of Sri Vinod Sharma, learned counsel for the appellant has submitted that no case is made out against the appellant on the basis of the evidence discussed above while Sri M.A. Khan, learned brief holder for the State has refuted the argument advanced by the learned counsel for the appellant.

16. From the evidence discussed above, P.W.1-Pushkar Lal has stated in his statement that in the evening of 14.04.1989 at 9.00 P.M. Gopal had come to his house and at that time he was alone in his house and his mother had gone to his sister's house. Accused-appellant Gopal Lal, who had already drunk liquor, came to his house and told that if he did not give him liquor, he (appellant) would set his house at fire. He refused to give liquor and due to fear he locked his house and was going downwards the house of his brother-in-law (Jeeja), just then he saw that Gopal Lal took out matchbox from his pocket and burnt a matchstick and put it on the

grass which was lying on the roof and his house was burning. He rushed towards his house to put out the fire but Gopal Lal threw stone upon him, then he rushed to the house of his brother-in-law Bali Lal and told him that Gopal Lal had set his house at fire. From there he along with his brother-in-law Bali Lal, Pratapu, Jagdish Lal went to his house and at that time Gopal Lal was hiding under a tree. He along with the other persons extinguished the fire by pouring the clay and his house is situated at some distance from village Baragaon. He has further stated that one cow and one calf died due to burn injuries and some food grains and other articles worth about Rs. 10-11 thousand were also burnt in that fire and the inspection about the dead cow and dead calf was also done. He dictated the report to Rati Lal, who wrote and read over the report to him and after that he put his thumb impression on that report, i.e. Ex.Ka-1. P.W.2-Bali Lal has stated that complainant Pushkar Lal is his brother-in-law (sala) and accused-appellant Gopal Lal resides in his village and Gopal Lal was known to him before this occurrence. He has further stated that the occurrence took place on 14.04.1989. In that night Pushkar Lal came to his house weeping and told that Gopal Lal had set his house at fire and this was also told that Gopal Lal was asking liquor from Pushkar Lal and when Pushkar Lal refused to give liquor, Gopal Lal set the house of Pushkar Lal at fire. Thereafter, he, Pratapu and Jagdish along with Pushkar Lal went to the house of Pushkar Lal, where they saw that the house was burning. They put out the fire by pouring the clay. He has further stated that he saw the accused-appellant Gopal Lal, who was hiding under a tree. After that, seeing him along with others, the accused-appellant

Gopal Lal ran away downwards. The total loss of Rs.10-11 thousand was occurred in that occurrence including one cow, one calf, food grains and other articles. The mother of Pushkar Lal had gone to the house of her daughter and no one was living in the house of Pushkar Lal except Pushkar Lal and his mother. The house of Pushkar Lal is situated at lonely place at about 1 or 1-1/2 Kms away from the village. Thus, the evidence of P.W. 1-Pushkar Lal is fully corroborated with the evidence of P.W.2-Bali Lal and there is no reason to disbelieve the evidence of P.W.1 Pushkar Lal.

17. P.W.3-Shasi Bhushan Dimari has stated that on 16.04.1989 he was posted as Livestock Expansion Officer, Baragaon. On that day he received a report from Medical Officer. He was ordered by the Livestock Officer to conduct medial of the cow and the calf and thereafter he went to the house of pushkar Lal situated at Baragaon where he found one cow and one calf dead and in his opinion the cow and the calf had died due to suffocation caused due to smoke and certificate regarding that was given by him to the police and that certificate is Ex.Ka-2 which was written and signed by him. Thus, the evidence of P.W.2-Bali lal and evidence of P.W.3-Shashi Bushan Dimari also support the circumstances and statement given by P.W.1 Pushkar Lal. From the evidence discussed above, the prosecution has proved the case beyond reasonable doubt against the accused-appellant that the accused-appellant had set residential house of Pushkar Lal at fire on 14.04.1989 at 9.00 P.M. situated at village Baragaon, Police Station Joshimath and due to that fire one cow and one calf died due to

burn injuries and food grains and other articles worth Rs. 10-11 thousand were also burnt inside the house.

18. Thus, the prosecution has proved the case against the accused-appellant under Sections 436 & 429 I.P.C. beyond reasonable doubt.

19. On the basis of the evidence available on record, the judgment and order dated 30.08.1990 passed by the Sessions Judge, Chamoli (Gopeshwar) in Sessions Trial No.3 of 1990 is correct and justified, as per the law. I am in full agreement with the judgment and order passed by the learned Sessions Judge.

20. In view of the above said discussions, the appeal is devoid of merits and is hereby dismissed. The conviction as well as sentence awarded by the learned Session Judge, Chamoli to the accused-appellant in Sessions Trial No.3 of 1990 is hereby confirmed.

21. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

21.11.2007
RBS